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7
8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

9
10 IN RE: VOLKSWAGEN GROUP OF
AMERICA, INC. DATA INCIDENT
11 LITIGATION

Case No. 4:21-CV-09203-DMR

**REQUEST FOR DISMISSAL WITHOUT
PREJUDICE**

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1 Pursuant to Fed. R. Civ. P. 23(e) and 41(a)(1)(A)(ii), Plaintiffs Ricardo Villalobos,
2 Anthony Service, John Hajny, and Jeremy Adams (collectively, “Plaintiffs”) hereby request
3 dismissal of this action, without prejudice, and with the parties bearing their own attorneys’ fees
4 and costs. The dismissal is requested so Plaintiffs may refile the action in California state court,
5 as disclosed to the Court at the Case Management Conference on August 17, 2022, and request
6 approval of the proposed settlement in that court. By doing so, it will allow one court to consider
7 the entire settlement in a single forum.

8 The putative class members will not be prejudiced by this dismissal. Because Plaintiffs
9 will promptly file a virtually identical class action in California state court for the purpose of
10 settlement, the putative class members in this action will soon be putative class members in the
11 state court action. In California state court, as here, the putative class members will have an
12 opportunity to participate in, object to or opt out of the settlement.

13 Nor will the putative class members be prejudiced in relation to the tolling of their claims
14 and any statutes of limitations. The earliest possible date the instant claims arguably accrued
15 was 14 months ago, in June 2021, when Defendants Volkswagen Group of America, Inc. and
16 Audi of America, LLC notified class members of the data incident. Compl. ¶ 27. The shortest
17 statute of limitations of any of the claims asserted in the Consolidated Complaint is two years.
18 And the limitations periods for many of the other claims are far longer. For example, the statutes
19 of limitations for the statutory claims—CCPA, UCL, and DPPA—are all four years. Thus, any
20 putative class members who are relying on the existence of this class action to preserve their
21 claims will have ample time after this dismissal to file individual actions if they so desire.

22 Further, depending on where such class members file their individual actions, they may
23 benefit from equitable tolling doctrines similar to *American Pipe* and its progeny. For instance,
24 in New Jersey, where Defendants Volkswagen Group of America, Inc. and Audi of America,
25 LLC are headquartered, “[a] long line of New Jersey cases have held that the filing of an action
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1 in one forum will toll the statute of limitations during the pendency of that proceeding”
2 *Staub v. Eastman Kodak Co.*, 726 A.2d 955, 965 (N.J. Super. Ct. App. Div. 1999).

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4 Dated: August 19, 2022

Respectfully submitted,

5 **CASEY GERRY SCHENK FRANCAVILLA**
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7 /s/ Gayle M. Blatt

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